IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2570 OF 2002
WITH
CIVIL REVISION APPLICATION NO.762 OF 1999

W.P. NO.2570/02 :

Dr.Sangeev D. Dangare & Ors. ... Petitioners.
Vs.
Pune Municipal Corporation & Ors. ...Respondents.
....
Mr. P. N. Joshi for the Petitioners.
.....
C. R. A. NO.762/99 :

Dr. Sanjiv D. Dangre & Anr. ...Petitioners.
Vs.
Mr.Javed Ahmed Kacchi & Ors. ...Respondents.
.....
Mr. M.T. Pise for the Petitioners.
Mr. R. V. Govilkar for Respondent No.1.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 27, 2006.

P.C. :

The dispute in the present petition is with regard to Final Plot No.302, admeasuring 728.43 sq.mtrs. to which the Petitioners are entitled under Town Planning Scheme No.3, Pune. It is the grievance of the Petitioners that the Statutory Authorities like Respondent Nos.1 to 3 have failed in their duty to implement the

scheme. It is, therefore, prayed that this Court should issue appropriate directions to the Respondents to take effective steps to hand over peaceful and vacant possession of Final Plot No.302 to the Petitioners by exercising powers and jurisdiction vested in them under the Maharashtra Regional and Town Planning Act, 1966.

2. Heard Learned Counsel for the parties. With the consent of the parties, leave granted to join Mr.Javed Ahmed Kacchi as Respondent No.5. Mr.Govilkar appears for the said Respondent No.5. From the record it appears that Respondent No. 5 filed a suit being Regular Civil Suit No.444 of 1997 along with an application for interim relief in the Court of the Civil Judge, Junior Division, Pune, challenging the Town Planning Scheme on the ground that he is a tenant and he has not been heard before Scheme became final. The Petitioners raised a dispute regarding the maintainability of the suit. The Learned Trial Judge by his order under Exhibit 74, dated 20th April 1999 upheld his jurisdiction. Against the said decision, the present Petitioner filed Civil Revision Application No.762 of 1999 before this Court and the same is pending. Section 149 of the Maharashtra Regional and Town

Planning Act, 1966, provides as follows :

> "149. Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings."

3. In view of the above, Suit being R.C.S. No.444/97 challenging the Town Planning Scheme, prima facie appears to be without jurisdiction.

4. In our opinion, the petition can be disposed of by giving the following directions :

-(i) Respondent No.5 agrees to withdraw the suit pending in the Court of the Civil Judge, Junior Division, Pune within two weeks from today. The said Respondent will be at liberty to file a petition challenging Town Planning Scheme No.3, Pune in so far as it affects him. If there is no effective order within four months in favour of Respondent No.5, the Respondent-Corporation shall implement the Town Planning Scheme No.3, Pune as held in **The Municipal Corporation of Greater Bombay. Vs. The Advance**

Builders (India) Pvt. Ltd., 75 B.L.R. 355;

-(ii) On withdrawal of the Suit, the Civil Revision Application shall become infructuous and in that view, the order dated 20th April 1999 passed below Exh.74 shall stand become redundant;

-(iii) These directions are without prejudice to the rights and contentions of the parties. Needless to say, the parties will be at liberty to raise all the contentions available to them.

5. In view of the above, the petition as well as the Civil Revision Application are disposed of.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.